



## Decision

**Matter of:** Fidelity Technologies Corporation

**File:** B-258944

**Date:** February 22, 1995

James Bick for the protester.  
W. A. Wotherspoon, Esq., for Unisys Corporation, an interested party.  
Jeffrey I. Kessler, Esq., and Pamela S. Bailey, Esq., Department of the Army, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that during technical evaluation agency improperly considered offerors' prior experience in performing contracts for the specific system being acquired is denied where the evaluation factors encompassed consideration of such experience.
2. Protest that agency failed to conduct meaningful discussions in area of prior experience is denied where record shows that all areas of concern were actually brought to protester's attention.

### DECISION

Fidelity Technologies Corporation protests the award of a contract to Unisys Corporation under request for proposals (RFP) No. DAAA09-93-R-0111, issued by the Department of the Army for the production, storage, installation, and system technical support services for remoted target system (RETS) equipment, as well as depot level repair services for certain pieces of equipment. Fidelity principally argues that the Army improperly downgraded its proposal in the evaluation, and failed to conduct meaningful discussions with Fidelity.

We deny the protest.

The RFP called for proposals for three different requirements: a fixed-price proposal to manufacture, store, and install various RETS components at numerous locations worldwide; a fixed-price proposal for depot level repair

work to be performed on certain specified RETS components; and a cost-plus-fixed-fee proposal for system technical support on the RETS equipment to be installed. Award was to be made to the firm whose proposal offered the best overall value to the government considering technical, management, past performance, and cost factors. Technical considerations were slightly more important than management, which in turn was slightly more important than past performance; cost was the least important consideration.

Four initial offers were submitted, including Fidelity's. These initial offers were reviewed by four separate evaluation panels which considered, respectively, the technical, management, past performance, and cost areas. Each evaluation panel then compiled discussion questions in their respective areas. After providing the discussion questions to the offerors and receiving their responses, the four panels again reviewed the proposals. After this reevaluation, the agency solicited and received best and final offers (BAFO) from all four firms. Based on a review of the BAFOs, the Army made award to Unisys as the offeror submitting the proposal representing the best overall value to the government.

Fidelity argues that the Army improperly considered in the evaluation whether offerors had previous RETS contract experience, since the RFP expressly required only that offerors have experience in various specified technical disciplines.<sup>1</sup> Fidelity concludes that its proposal was improperly downgraded for its lack of RETS experience even though it has experience in the technical disciplines enumerated in the RFP.

In making qualitative distinctions between proposals, an agency properly may take into account specific, albeit not expressly identified experience that is logically encompassed by or related to a stated criterion. FMS Corp., B-255191, Feb. 8, 1994, 94-1 CPD ¶ 182. Here, while the RFP did not specifically require firms to have experience with RETS-type work, the solicitation is for the production of

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<sup>1</sup>These requirements include experience in reading and interpreting government drawings and specifications; a demonstration that the offeror has adequate facilities for production, repair, and storage, as well as an adequate property management and accounting system; adequate knowledge of computer-controlled systems; personnel with the necessary technical knowledge and experience; knowledge and experience in the production and installation of electronic, hydraulic, and mechanical equipment; and experience in processing engineering changes, first article testing results, and quality deficiencies; ports.

RETS equipment and related support activities, and did provide that experience with the enumerated RETS-related skills would be considered. In these circumstances, we consider offerors' specific experience with RETS production and support activities to be clearly encompassed by the terms of the solicitation; that is, offerors reasonably should have expected direct RETS experience to be taken into consideration. Such experience therefore properly was considered by the agency in evaluating proposals. See id. Similarly, we see nothing unreasonable in the agency's assigning higher scores to proposals showing specific RETS experience, since such experience obviously is the kind most closely related to the performance of the RETS work under the RFP.

Fidelity also maintains that the Army improperly downgraded its offer for proposing subcontractors for two of the major aspects of the contract, production of hydraulic/mechanical components, and installation of railroad track beds. According to Fidelity, its two subcontractors are leading firms in their respective fields and their proposed participation in the project should have been viewed as a strength by the agency rather than a weakness.

Fidelity's premise--that its proposal was downgraded for proposing to use subcontractors--is not supported by the record. Rather, the record shows that the Army's concern in this area was not with Fidelity's proposed use of subcontractors, but with the adequacy of Fidelity's proposal. The evaluators found, for example, that Fidelity's proposal demonstrated adequate knowledge in the production of electronic equipment, but was significantly lacking in detail relating to mechanical/hydraulic production capabilities or installation experience for systems similar to the one being acquired. In this regard, in discussing the production of the armor moving target carrier assembly (one of the hydraulic/mechanical components required), Fidelity's proposal states only that "Fidelity's subcontractor . . . who will be producing the armor moving target carrier assembly, has provided an assembly and test description for the subassemblies that they will be building. This company has proven experience in the vehicle field." The proposal contains little additional detail regarding this aspect of the contract, and does not include its subcontractor's assembly and test description materials. The lack of detail concerning its proposed subcontracting constituted a reasonable basis for downgrading the proposal in the areas where subcontractors would be performing. See GEC Avionics, Inc., B-250957; B-250957.2, Feb. 25, 1993, 93-2 CPD ¶ 24.

Fidelity argues that the agency improperly failed to conduct adequate discussions with the firm on the issue of its prior

experience. In this regard, the RFP stated that offerors would be provided an opportunity to rebut any negative findings of the agency relating to past performance. Fidelity maintains that it was not advised of the agency's negative information relating to its past performance, and thus was never afforded an opportunity to rebut the agency's findings, and thereby improve its "high risk" performance risk assessment.

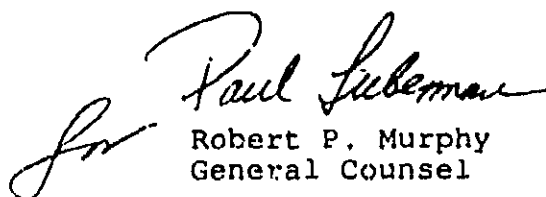
Agencies are required during discussions to lead offerors into those areas of their proposal needing amplification or correction. Wade Perrow Constr., B-255332.2, Apr. 19, 1994, 94-1 CPD ¶ 266. The record shows that the agency satisfied this standard. The evaluators found numerous deficiencies relating to the adequacy of the past performance information presented in Fidelity's initial proposal. For example, the evaluators were able to find only a limited amount of information relating to the prior experience of Fidelity's subcontractors, and were unable to determine the relevancy of Fidelity's prior contracts to this requirement. During discussions, Fidelity was asked questions about each of the evaluators' concerns relating to its prior contracts, as well as those of its subcontractors; Fidelity was asked to provide basic information relating to its subcontractors, such as points of contact within each firm, as well as information relating to its subcontractors' prior contracts that had been referred to but not sufficiently identified in the proposal. Fidelity was also asked to provide statements to demonstrate the relevance of its prior contracts. We conclude that the agency did, in fact, provide meaningful discussions in this area.

Fidelity contends that the agency improperly retained its proposal in the competitive range, since it was clear after discussions--before soliciting BAFOs--that the firm had no reasonable chance for award. This argument is without merit. While Fidelity's proposal was the lowest rated after discussion responses were considered, it was technically acceptable, and there was no way for the agency to predict the competitive standing of the firms, taking into consideration price, without BAFOs. We see nothing improper in the agency's retaining Fidelity's acceptable proposal in the competitive range based on the possibility that its price could be so substantially reduced that the proposal could (depending on what the other offerors did in their BAFOs) provide a low-cost award alternative. Fidelity did in fact offer a substantial reduction in its BAFO so that its price was only very slightly higher than Unisys's. The competitive range determination was unobjectionable. See Federal Acquisition Regulation § 15.609 (where there is doubt concerning whether to include a firm in the competitive range, that doubt should be resolved in favor of

including the firm); Mainstream Eng'g Corp., B-251444, Apr. 8, 1993, 93-1 CPD ¶ 307. Id.

Fidelity also requests that we declare it entitled to the costs of preparing its proposal. Our Office will only find a protester entitled to proposal preparation costs where we determine that a solicitation, proposed award or award of a contract does not comply with statute or regulation. EAI Corp., B-252748, July 26, 1993, 93-2 CPD ¶ 56. Since we find nothing improper in the Army's actions in connection with this acquisition, we have no basis to find Fidelity entitled to these costs.

The protest is denied.

  
Robert P. Murphy  
General Counsel